

Message Text

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TO AMEMBASSY LONDON

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TAGS: PFOR, CPRS, UK

SUBJECT: EXTRADITION - MERVYN HAROLD CROSS

REF: LONDON 10248

1. SUGGESTED RESPONSE TO CROSS' STATEMENTS:

A. CROSS REFERS TO SCHEDULE OF OFFENSES ANNEXED TO TREATY.

(PARA 2, I REFTEL) THIS IS APPARENTLY A REFERENCE TO 1972 TREATY, NOT YET IN FORCE. THIS TREATY HAS NO RELEVANCE WHATSOEVER TO PRESENT REQUEST UNDER 1931 TREATY.

B. USG IS A FEDERAL SYSTEM. UNDER THIS SYSTEM, GENERAL CRIMINAL JURISDICTION IS RESERVED TO THE STATES. THE UNITED STATES CONSTITUTION EXPRESSLY GRANTS TO THE UNITED STATES CONGRESS AUTHORITY IN RESPECT OF CERTAIN TYPES OF OFFENSES--COUNTERFEITING, PIRACY AND FELONIES ON THE HIGH SEAS. THROUGH THE CONGRESS' POWER TO ESTABLISH AND REGULATE SUCH MATTERS AS POST OFFICES, THE CONGRESS IS CONSIDERED IMPLIEDLY TO HAVE BEEN GRANTED THE POWER TO ENACT CRIMINAL STATUTES IN RESPECT OF THE DESTRUCTION OR OTHER MISUSE OF SUCH FACILITIES.

C. THE TENTH AMENDMENT TO THE CONSTITUTION PROVIDES THAT POWERS NOT DELEGATED TO THE UNITED STATES BY THE CONSTITUTION, NOR PROHIBITED BY IT TO THE STATES, ARE RESERVED TO

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THE STATES RESPECTIVELY OR TO THE PEOPLE. THUS, THE CONGRESS IS WITHOUT THE POWER UNDER THE CONSTITUTION WITH REGARD TO MATTERS NOT DELEGATED TO IT, AND IT WOULD HAVE NO CRIMINAL JURISDICTION WITH RESPECT TO OTHER OFFENSES THAN THOSE REFERRED TO ABOVE. FOR THIS REASON ACCEPTANCE OF CROSS' INTERPRETATION WOULD HAVE DISASTROUS EFFECT ON U.S. (I.E. FEDERAL AND STATE) ATTEMPTS TO DEAL WITH CRIME.

D. DEPT. DOES NOT SEE RELEVANCE OF ARTICLE 2 OF EITHER TREATY TO THIS POINT. (CROSS CITES ARTICLES 2 & 9, PARA 2, II, REFTEL). ARTICLE 9 OF THE 1931 (AND 1972) TREATY REFERS TO THE LAWS OF THE HIGH CONTRACTING PARTY. THIS MUST BE READ AS REFERRING TO STATE AND FEDERAL LAWS. FROM THE VANTAGE POINT OF THE UK, NO DISTINCTION SHOULD BE MADE. AS STATED ABOVE, ANY OTHER READING WOULD HAVE DISASTROUS EFFECT ON U.S. CRIMINAL LAWS.

E. THIS INTERPRETATION IS FURTHER DEMONSTRATED BY FACT THAT INDIVIDUAL STATES OF U.S. CANNOT NEGOTIATE TREATIES. USG NEGOTIATES AS THEIR REPRESENTATIVE. USG, AS QTE HIGH CONTRACTING PARTY UNQTE, REPRESENTS BOTH STATE AND FEDERAL GOVTs.

F. THE REFERENCE IN PARA 1 OF THE PROTOCOL TO THE 1972 TREATY (WHICH DEPT. REPEATS IS NOT GERMANE HERE) TO FEDERAL JURISDICTION IS INTENDED TO BE CERTAIN THAT EXTRADITION IS ALLOWED FOR CERTAIN PECULIARLY FEDERAL CRIMES IN ADDITION REPEAT IN ADDITION TO NORMAL STATE-LEVEL OFFENSES. THE "COMMERCE CLAUSE" OF THE CONSTITUTION (ARTICLE I SECTION 8, CLAUSE 3) GRANTS CONGRESS THE "POWER . . . TO REGULATE COMMERCE WITH FOREIGN NATIONS, AND AMONG THE SEVERAL STATES. . . ." THIS CLAUSE, AS INTERPRETED AND DEVELOPED OVER THE DECADES BY THE FEDERAL COURTS, NOTABLY THE UNITED STATES SUPREME COURT, HAS COME TO CONSTITUTE THE DIRECT SOURCE OF THE MOST IMPORTANT POWERS WHICH THE NATIONAL GOVERNMENT EXERCISES IN TIME OF PEACE. IN THE CRIMINAL AREA, IT HAS BEEN EMPLOYED AS THE BASIS FOR ASSERTING FEDERAL JURISDICTION WITH RESPECT TO ACTIVITIES WHICH, IN THE ABSENCE OF TRANSPORT OR TRANSFER ACROSS A STATE LINE, COULD BE REACHED ONLY BY THE CRIMINAL LIMITED OFFICIAL USE

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LAWS OF THE INDIVIDUAL STATES. THE CONFERRING OF FEDERAL JURISDICTION DOES NOT MERELY MAKE TRIAL IN FEDERAL COURTS POSSIBLE, BUT MAKES IT POSSIBLE FOR THE EXTENSIVE SERVICES AND FACILITIES OF THE FEDERAL BUREAU OF INVESTIGATION TO BE AVAILABLE IN THE INVESTIGATION OF THE OFFENSES WITH A VIEW TO IDENTIFICATION AND ARREST OF THE SUBJECTS. IT ALSO INVOLVES THE PROSECUTION OF SUSPECTS BY UNITED STATES

ATTORNEYS UNDER INSTRUCTIONS FROM THE DEPARTMENT OF JUSTICE, RATHER THAN BY LOCAL DISTRICT ATTORNEYS AS IN THE CASE OF VIOLATIONS OF STATE CRIMINAL LAWS.

G. WITHOUT THE PROTOCOL, WE MIGHT HAVE DIFFICULTY OBTAINING EXTRADITION ON MANY FEDERAL CHARGES. MOST COUNTRIES DO NOT, FOR EXAMPLE, CONSIDER QTE TRANSPORTATION OF STOLEN GOODS ACROSS STATE LINES UNQTE AS AN OFFENSE. ONLY THE THEFT ITSELF IS PUNISHED. AS A RESULT, COUNTRIES SOMETIMES BALK AT AN EXTRADITION ON SUCH FEDERAL CHARGES. THAT DOESN'T MEAN HOWEVER THAT THEY CHALLENGE THE EXTRADITABILITY OF THEFT ITSELF. THE LANGUAGE OF THE PROTOCOL DEALS WITH THIS PROBLEM, NOTHING ELSE. IT SHOULD NOT BE TAKEN OUT OF CONTEXT (OF A PRESENTLY UNENFORCEABLE TREATY) AND SOMEHOW REVERSED TO LIMIT REPEAT LIMIT THE LIST OF EXTRADITABLE OFFENSES.

H. THE UK HAS, IN FACT, RECOGNIZED THE U.S. FEDERAL SYSTEM WITHOUT QUESTION IN PREVIOUS EXTRADITION CASES. EXTRADITION HAS OFTEN BEEN GRANTED ON STATE CHARGES WITHOUT REFERENCE TO FEDERAL JURISDICTION, (E.G. JAMES EARL RAY.)

2. DEPT. FOUND TEXT OF CROSS CHALLENGES (AS CONTAINED REFTEL) SOMEWHAT CONFUSING TO FOLLOW. IF GRAUPNER HAS FURTHER QUESTIONS, DEPT. WILL GLADLY RESPOND ASAP. KISSINGER

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